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|-----------------------------------|---|------------------------------------|
| |) | Chapter 11 |
| In re |) | |
| |) | Case No. 00-04471 (JFK) |
| ARMSTRONG WORLD INDUSTRIES, INC., |) | |
| <i>et al.</i> , |) | (Jointly Administered) |
| |) | |
| Debtors. |) | Objection Deadline: |
| |) | April 29, 2005 at 4:00 p.m. |
| |) | Hearing Date: |
| |) | May 16, 2005 at 4:30 p.m. |
| |) | |
| |) | Related Docket No. 8082 |

Please take notice that on April 29, 2005, Liberty Mutual Insurance Company file a Motion to Continue Hearing on Joint Motion to (i) Approving Settlement Agreement between Armstrong World Industries, Inc. and the United States Environmental Protection Agency and (ii) to Approving Assumption..

Please take further notice that a response date and hearing date, if any, will be set at the Court's discretion.

Dated: April 29 2005

Respectfully submitted,

LIBERTY MUTUAL INSURANCE COMPANY

By its attorneys,

By its attorneys,
Cherene Davis

Charlene D. Davis (No. 2336)

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and

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| |) | Case No. 00-04471 (JFK) |
| ARMSTRONG WORLD INDUSTRIES, INC., |) | |
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**MOTION OF LIBERTY MUTUAL INSURANCE COMPANY TO
CONTINUE HEARING ON JOINT MOTION TO (I) APPROVING
SETTLEMENT AGREEMENT BETWEEN ARMSTRONG WORLD
INDUSTRIES, INC. AND THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND (II) TO APPROVING ASSUMPTION
OF THE MALVERN CONSENT DECREE AGREEMENTS**

Liberty Mutual Insurance Company ("Liberty Mutual") by and through its undersigned counsel, hereby moves this Court, pursuant to Rule 16.5 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware ("Local Rule 16.5")¹ and Chambers Procedures for Judge Judith K. Fitzgerald revised 1/25/05 (the "Chambers Procedures"), for an order continuing the hearing (the "Motion to Continue Hearing") on the Joint Motion for an Order (i) Approving Settlement Agreement between Armstrong World Industries , Inc. and the United States Environmental Protection Agency and (ii) Approving the Assumption of the Malvern Consent Decree Agreements (the "9019 Motion"), currently scheduled for May 16, 2005 at 4:30 p.m., an omnibus hearing date in the case. In support of the Motion to Continue Hearing, Liberty Mutual represents as follows:

¹ Local Rule 16.5 is applicable in this matter by virtue of Del. Bankr. L.R. 1001-1(b).

1. On April 8, 2005, the Armstrong World Industries, Inc ("AWI") and the United States Environmental Protection Agency (the "EPA") filed the 9019 Motion, in which they seek court approval of a settlement (the "Settlement") that, *inter alia*, would allow the EPA an unsecured claim in the amount of \$8,727,738.80 (the "Proposed Allowed Claim") and resolve disputes as to 38 sites.

2. The Settlement involves certain liabilities, including for the Peterson/Puritan Site as described in the 9019 Motion, for which AWI seeks indemnity under policies issued by Liberty Mutual.

3. Not only is the \$8,727,738.80 Proposed Allow Claim amount without basis, but the Settlement seeks to allocate nearly 90% of the total settlement consideration to only one of the 38 sites without any factual basis for doing so -- and with the apparent objective of enabling AWI and/or the EPA to assert against Liberty Mutual, in the coverage context, that the Court's approval of the 9019 Motion and Settlement constitutes claim (*res judicata*) or issue (*collateral estoppel*) preclusion as to the reasonableness of the overall Settlement and as to the allocation of \$7,780,000 of the \$8,727,738.80 Proposed Allowed Claim to the Peterson/Puritan Site.

4. On April 28, 2005, Liberty Mutual filed an Objection of Liberty Mutual Insurance Company to the Joint Motion for Order (i) Approving Settlement Agreement between Armstrong World Industries, Inc and the United States Environmental Protection Agency and (ii) Approving the Assumption of the Malvern Consent Decree Agreements (the "Objection") (attached hereto as Exhibit A"). Shortly, Liberty Mutual will serve on AWI extensive formal discovery requests, as more fully set forth in paragraph 16 of the

Objection, seeking, *inter alia*, information regarding the overall Settlement and (among other things) the allocation of the Proposed Allowed Claim to the Peterson/Puritan Site.

5. A hearing on the 9019 Motion is currently set for May 16, 2005 at 4:30 p.m., an omnibus hearing date.

Requested Relief

6. Liberty Mutual respectfully requests that the Court continue the hearing on the 9019 Motion in order to permit sufficient time for Liberty Mutual to complete discovery and to prepare for an evidentiary hearing on the 9019 Motion.

Basis for Relief

7. Local Rule 16.5 provides in pertinent part, "A request for... postponement of the trial shall be made by motion or stipulation prior to the expiration of the date deadline and shall include the following: (1) the reasons for the request; and (2) a certification that counsel has sent a copy of the request to the client."

8. The Chambers Procedures at paragraph 8 provide that no hearing will be continued or rescheduled unless an appropriate motion and proposed order have been electronically filed with the Clerk of the Bankruptcy Court in Delaware and emailed in .pdf format to Rachel_Bello@deb.uscourts.gov at least 7 calendar days before the scheduled hearing date.

9. The Second Revised Order Establishing Case Management Procedures and Hearing Schedule entered in the case on March 15, 2005 provides that "No witnesses will be heard on omnibus hearing dates unless the Court specifically orders otherwise. All evidentiary hearings will be separately scheduled."

10. The Motion to Continue Hearing complies with Local Rule 16.4 and Chambers Procedures. Counsel hereby certifies that a copy of the Motion to Continue Hearing has been sent to Liberty Mutual.

11. Cause exists to approve the Motion To Continue Hearing, since Liberty Mutual is entitled to and will shortly seek discovery regarding significant factual matters related to the 9019 Motion. Since discovery will not be complete by the May 16, 2005 omnibus hearing date and since an evidentiary hearing (which the hearing on the 9019 Motion will undoubtedly be) must be separately scheduled, the hearing on the 9019 Motion should be continued to a date, that will permit (i) the conclusion of discovery and (ii) preparation for and presentation of an evidentiary hearing.

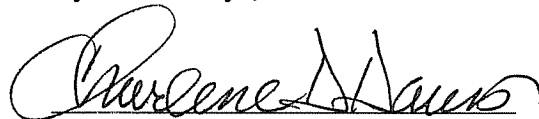
WHEREFORE Liberty Mutual respectfully requests that the Court enter the order attached hereto continuing the hearing on the 9019 Motion to a date to be determined.

Dated: April 29, 2005

Respectfully submitted,

LIBERTY MUTUAL INSURANCE
COMPANY

By its attorneys,

A handwritten signature in cursive script, appearing to read "Charlene D. Davis", written over a horizontal line.

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(202) 887-4000

EXHIBIT “A”

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|-----------------------------|---|-----------------------------|
| <u>In re</u> |) | Chapter 11 Case No. |
| |) | |
| ARMSTRONG WORLD INDUSTRIES, |) | 00-4471 (JKF) |
| INC., <i>et al.</i> , |) | |
| |) | (Jointly Administered) |
| Debtors. |) | |
| |) | Objection Deadline: |
| |) | April 29, 2005 at 4:00 p.m. |
| |) | Hearing Date: |
| |) | May 16, 2005 at 11:30 a.m. |
| |) | Related Docket 8082 |

**OBJECTION OF LIBERTY MUTUAL INSURANCE COMPANY TO
JOINT MOTION FOR ORDER (i) APPROVING SETTLEMENT AGREEMENT
BETWEEN ARMSTRONG WORLD INDUSTRIES, INC. AND THE UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY AND (ii) APPROVING
THE ASSUMPTION OF THE MALVERN CONSENT DECREE AGREEMENTS**

Liberty Mutual Insurance Company (“Liberty Mutual”), by its undersigned counsel, respectfully submits the following Objection to the Joint Motion For Order (i) Approving Settlement Agreement Between Armstrong World Industries, Inc. And The United States Environmental Protection Agency And (ii) Approving The Assumption Of The Malvern Consent Decree Agreements (“Joint Motion”).

1. The proposed Settlement Agreement between Armstrong World Industries, Inc. (“Armstrong”) and The United States Environmental Protection Agency (“EPA”) involves certain liabilities (including for the Peterson/Puritan Site discussed infra), for which Armstrong seeks indemnity under policies issued by Liberty Mutual.

2. The Settlement seeks to allocate nearly 90% of the total settlement consideration to one (among at least 38) of the Sites involved, the Peterson/Puritan Site.

(Settlement Agreement ¶ 4.N.) As we show, there is no basis for the Settlement Agreement's proposed overall allowed claim amount of \$8,727,738.80 or for the \$7,780,000 allocated to the Peterson/Puritan Site. Moreover, the Settlement is purposely structured to enable Armstrong and/or EPA to assert against Liberty Mutual, in the coverage context, that the Court's approval of Settlement Agreement constitutes claim (res judicata) or issue (collateral estoppel) preclusion as to reasonableness of the overall settlement and as to allocation of \$7,780,000 of the \$8,727,738.80 agreed allowed claim amount to the Peterson/Puritan Site.

THE SETTLEMENT AGREEMENT

3. The Joint Motion asserts that the Settlement Agreement is a “global resolution of its [Armstrong’s] environmental liabilities to the United States.” (Joint Motion ¶¶ 7, 18.) It resolves liability relating to 18 “Discharged Sites” (Settlement Agreement ¶ 1.J), to which no claim payment is allocated (Settlement Agreement ¶ 11); and as to 19 additional “Liquidated Sites” (Settlement Agreement ¶ 1.P), to almost all of which claim amounts are allocated (Settlement Agreement ¶ 4). In addition, the Settlement Agreement sets up a framework for liability resolution as to “Additional Sites” (Settlement Agreement ¶ 8-10), and resolves liability relating to the Malvern Site through assumption of certain contracts (Settlement Agreement ¶ 6).

4. The crux of this objection is not only the lack of basis for the agreed overall claim amount (\$8,727,738.80), but also the amount allocated to one of the many sites, the Peterson/Puritan Site in Lincoln/Cumberland, Rhode Island. The stipulated Peterson/Puritan Site amount is \$7,780,000 (Settlement Agreement ¶ 4N). As shown in the Declaration of Nancy L. Reid (“Reid Declaration”) attached as Exhibit A hereto,

there is no reasoned basis for the overall \$8,727,738.80 stipulated claim amount or for allowing a \$7,780,000 claim as to the Peterson/Puritan Site. These numbers are the product of speculation and guesswork. (Reid Decl. ¶ 3.)

5. The EPA filed a single proof of claim, No. 4724 (Joint Motion ¶ 4); the Settlement Agreement resolves liability as to at least 38 sites under this proof of claim. However, under the Agreement the EPA will obtain a separate allowed unsecured claim for \$7.78 million as to the Peterson/Puritan Site, as opposed to a single aggregate allowed claim for all resolved sites. (Settlement Agreement ¶ 4 at p. 7.)

ROLE OF INSURANCE IN THE SETTLEMENT

6. Insurance is highly germane to the Settlement Agreement. The allowed EPA claims will receive from the Armstrong estate only the fractional percentage distribution that other general insured claims receive. (Settlement Agreement ¶ 12.) The Agreement defines six sites, specifically including the Peterson/Puritan Site, as “Insurance Sites.” (Settlement Agreement ¶ 1.O.) The total agreed claims for these six Insurance Sites is \$8,603,169.18, which is more than 98% of the overall settlement amount. For these Insurance Sites, the Agreement contemplates that the EPA may have a right to bring “a direct action against any of Armstrong World Industries, Inc.’s insurers...” for the portion of the claim amount (the bulk thereof) not paid by the Armstrong estate (Settlement Agreement ¶ 5.C), doubtless on the likely-to-be-asserted theory that once the EPA receives an allowed claim from this Court (as it would for each of the six sites), the EPA can assert it has a federal judgment entitling it to garnish policies under state law.

7. The EPA can elect to waive direct action rights and share in any proceeds Armstrong recovers from the insurer -- the proceeds, if any, to be shared 52% for Armstrong, 48% for EPA. (Settlement Agreement ¶ 5.D.) In that event, Armstrong can “allocate in writing all insurance proceeds on a fair and equitable basis among the various Insurance Sites and other sites....” (Settlement Agreement ¶ 5.D). In other words, Armstrong will not be bound by the claim amount allocation that it seeks to impose on Liberty Mutual; it can reallocate insurance proceeds among all sites, insured or not insured, for its own benefit.

8. The existence and extent of insurance coverage is disputed. Regardless of such dispute, any entity seeking payment from Liberty Mutual based on a settlement (to which Liberty Mutual has not consented) must show not only that the claim is covered, but also (among other things) that the settlement amount is reasonable and non-collusive. *See In re Prudential Lines*, 170 B.R. 222, 246-47 (S.D.N.Y. 1994), appeal dismissed, 59 F.3d 327 (2d Cir. 1995); *Nationwide Mutual Insurance Co. v. Lehman*, 743 A. 2d 933, 942 (Pa. Super. Ct. 1999). By transforming the Settlement here to an agreed allowed claim, Armstrong and EPA seek to relieve themselves of that burden.

NO REASONED BASIS FOR THE AGREED CLAIM AMOUNT

9. As set forth in the Reid Declaration, Liberty Mutual has made diligent effort to obtain information from Armstrong. (Reid Decl. ¶ 4.) But information necessary to reach a reasoned conclusion regarding whether Armstrong has any liability for the Peterson/Puritan Site and for the collection of sites encompassed in the Settlement, and, if so, the magnitude or range of such liability, has not been provided.

(Id. at ¶¶ 3-15.) No evidence of this kind was attached to, or provided with, the Joint Motion. As best Liberty Mutual can ascertain, it does not yet exist. (Reid Decl. ¶¶ 4-15.)

10. As recently as April 25, 2005, Ms. Reid verified with the EPA that critical and necessary documents, the Remedial Investigation Report and Feasibility Study, do not exist. (Reid Decl. ¶¶ 7,8.) These documents would show the EPA's assessment of the Peterson/Puritan Site and the remedy selected and projected cost thereof. Id.

11. It is not possible to determine if Armstrong has any liability relating to the Peterson/Puritan Site, and if liability is subsequently established, to calculate Armstrong's allocated share of the projected remedy cost for the Peterson/Puritan Site based on the information currently available. (Reid Decl. ¶ 9.) On April 25, 2005, EPA confirmed to Liberty Mutual that it had not yet allocated shares of liability among nearly 80 identified potentially responsible parties ("PRPs") at that Site. (Reid Decl. ¶ 11.) Liability share allocation is critical, since not only is Armstrong only one of 80 PRPs, and Armstrong sent waste to that Site for only 3 out of 32 years in which it accepted waste. (Reid. Decl. ¶¶ 6, 10, 15.)

12. Given the unfounded nature of the EPA's assessment of the Peterson/Puritan Site, the high number of PRP's (80), and the relatively small number of years that Armstrong sent waste to this Site (3 out of 32), an assessment of \$7,780,000 is baseless and wholly speculative. (Reid Decl. ¶ 15.) Indeed, in the absence of a Remedial Investigation Report, Feasibility Study, and share allocation among PRPs, any determination or assessment of liability is guesswork. (Reid Decl. ¶ 9.)

13. The Joint Motion, of course, downplays the stipulated allocation to the Peterson/Puritan Site, noting perfunctorily in a footnote that “EPA’s claim with respect to the Peterson/Puritan site is the only claim by the EPA against AWI in excess of \$300,000.” (Joint Motion at 4 n.4.) Instead, the focus of the Joint Motion is the “global” nature of the settlement. (Joint Motion ¶¶ 7, 8, 18, 19, 21.) It touts “a full settlement of AWI’s liability at over 37 sites for an allowed prepetition claim of approximately \$8 million.” (Joint Motion ¶ 19.) But the \$8 million number also is without support.

14. The Motion pays lip service to the required settlement factors (probability of success, difficulty in collection, complexity and expense, creditor interests) (Joint Motion ¶ 17), but it does not analyze or present specific facts. Predictably, the Joint Motion urges minimal judicial scrutiny, stressing Second Circuit authority that a settlement be approved unless it “fall[s] below the lowest point in the range of reasonableness.” (Joint Motion ¶ 16, citations omitted.) However, as shown, the Joint Motion does not meet the standards for settlement approval encompassed in Bankruptcy Rule 9019(a) and long established case precedent.

WHAT TO DO

15. The matter should be set for full evidentiary hearing in this Court. Prior to such hearing, Liberty Mutual “is entitled to discovery sufficient to explore...whether the settlements are reasonable...” *In Re Prudential Lines, Inc.*, 170 B.R. at 246. That discovery will include both documents and depositions of the pertinent Armstrong and EPA witnesses.

16. Shortly, Liberty Mutual will serve formal document requests seeking among other things (1) the “extensive analyses and presentations by environmental and legal professionals on both sides” referenced at ¶ 19 of the Joint Motion; (2) all documents relating to “AWI’s alleged equitable allocation at each of the Liquidated Sites,” referenced at ¶ 19 of the Joint Motion; (3) all documents relating to “total past and estimated future costs of clean up at the site,” referenced at ¶ 19 of the Joint Motion; (4) all documents relating to the “arguments that AWI’s waste was less toxic than the waste of the other PRPs,” referenced at ¶ 19 of the Joint Motion; (5) all documents relating to “AWI’s allocations and the expected cost of remediation at each of the Liquidated Sites,” referenced at ¶ 19 of the Joint Motion; (6) all Armstrong-generated documents indicating its knowledge as to the hazardous nature of the waste it sent to the Peterson/Puritan Site; (7) all documents relating to negotiations between Armstrong and the EPA relating to the Settlement Agreement.

17. In addition to all of the above points, Liberty Mutual further states that if any settlement based on a thorough analysis of Armstrong's liability and appropriate allocation of the projected remedy cost is subsequently approved -- and the present Settlement Agreement should not be approved -- the Court should make clear in its order that nothing therein (i) be deemed to sanction or create a direct cause of action by EPA against Liberty Mutual that would not otherwise exist under state law; or (ii) in any way affect or impair Armstrong’s obligation to Liberty Mutual to pay retrospective policy premiums.

CONCLUSIONS


For the reasons stated, Liberty Mutual requests that the Court deny the Joint Motion and grant such other and further relief that may be just and proper.

Dated: April 29, 2005

Respectfully submitted,

LIBERTY MUTUAL INSURANCE
COMPANY

By its attorneys,



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| Debtors. |) | |
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| |) | |

**ORDER GRANTING MOTION OF LIBERTY MUTUAL INSURANCE
COMPANY TO CONTINUE HEARING ON JOINT MOTION TO (I)
APPROVING SETTLEMENT AGREEMENT BETWEEN ARMSTRONG
WORLD INDUSTRIES, INC. AND THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND (II) TO APPROVING ASSUMPTION**

The Court having considered the Motion of Liberty Mutual Insurance Company to Continue Hearing on Joint Motion to (i) Approving Settlement Agreement between Armstrong World Industries, Inc. and the United States Environmental Protection Agency and (ii) to Approving Assumption (the "Motion to Continue Hearing") and finding cause to grant the relief requested therein;

It is hereby ordered, on this ____ day of May, 2005, that the hearing on the Joint Motion to (i) Approving Settlement Agreement between Armstrong World Industries, Inc. and the United States Environmental Protection Agency and (ii) to Approving Assumption. is continued to a date to be determined.

The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge.